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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL CASTELLINO,

Defendant and Appellant.

A135840

(San Francisco County  
Super. Ct. No. 2386585)

This is an appeal from an order revoking the probation of defendant Michael Castellino based upon his admission of a violation of the probationary condition that he obey all laws.

After defendant filed a timely notice of appeal, appellate counsel was appointed to represent him. Appointed counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*People v. Wende*), in which he raises no issue for appeal and asks this court for an independent review of the record. (See also *People v. Kelly* (2006) 40 Cal.4th 106, 124 (*People v. Kelly*).) Counsel attests that defendant was advised of his right to file a supplemental brief in a timely manner, but he has not exercised such right.

We have examined the entire record in accordance with *People v. Wende*. For reasons set forth below, we agree with counsel that no arguable issue exists on appeal. Accordingly, we affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

On September 25, 2008, a felony complaint was filed charging defendant with second degree robbery in violation of Penal Code section 211.<sup>1</sup> The complaint further alleged that defendant was ineligible for probation pursuant to section 1203, subdivision (e)(4).

Following defendant's waiver of the right to a jury trial and negotiated plea of guilty to grand theft in violation of section 487, subdivision (c), the prosecution withdrew the allegation of probation ineligibility.

On September 21, 2009, in accordance with the probation department's recommendation, the trial court suspended imposition of a sentence and placed defendant on formal probation for three years subject to various terms and conditions, including that he obey all laws.

On February 16, 2012, the district attorney filed a motion to revoke defendant's probation based upon a police report alleging probable cause to arrest him for assault, aggravated battery and vandalism in connection with a domestic dispute. The trial court administratively revoked defendant's probation on the same day.

The district attorney ultimately declined to prosecute defendant and referred the matter to the probation department. On March 29, 2012, defendant, represented by counsel, waived his right to a contested hearing and freely and voluntarily admitted violating probation by disobeying the law. Defendant also acknowledged his understanding that, by admitting the violation of probation, among other things, "you will serve six months in the county jail" and "are going to have to do 52 weeks of batterer's treatment."

The trial court thereafter reinstated defendant's probation, but modified the terms to include six months in county jail (with 45 days of credit) and mandatory completion of

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<sup>1</sup> Unless otherwise stated, all statutory citations herein are to the Penal Code.

a 52-week treatment program for batterers. A timely notice of appeal was filed on May 11, 2012.<sup>2</sup>

## DISCUSSION

Neither appointed counsel nor defendant has identified any issue for our review. Upon our own independent review of the record, we agree none exists. (*People v. Wende, supra*, 25 Cal.3d 436.) The trial court reinstated defendant's probation with modified terms and conditions, including serving six months in county jail and completing a 52-week treatment program for batterers, after defendant, represented by counsel, freely and voluntarily admitted violating the express probationary condition that he obey all laws. The trial court's decisions were in all regards proper. (See *People v. Segura* (2008) 44 Cal.4th 921, 932 ["During the period of probation, the court may revoke, modify, or change its order suspending imposition or execution of the sentence, as warranted by the defendant's conduct. (§§ 1203.2, 1203.3)"]; see also Cal. Rules of Court, rule 4.435 ["When the defendant violates the terms of probation or is otherwise subject to revocation of probation, the sentencing judge may make any disposition of the case authorized by statute"].)

Thus, having ensured defendant has received adequate and effective appellate review, we affirm the trial court's judgment. (*People v. Kelly, supra*, 40 Cal.4th at pp. 112-113; *People v. Wende, supra*, 25 Cal.3d 436.)

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<sup>2</sup> The notice of appeal states the appeal is based on the validity of defendant's admission of the probation violation and on matters occurring after his admission. However, the trial court denied defendant's request for a certificate of probable cause. As such, his appeal is authorized under California Rules of Court, rule 8.304(b)(4)(B), permitting review of matters occurring after his admission of a probation violation, but not matters affecting the validity of his admission.

## **DISPOSITION**

The judgment is affirmed.

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Jenkins, J.

We concur:

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McGuinness, P. J.

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Siggins, J.